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From: Derickson, Craig
Sent: Tuesday, October 05, 2004 3:46 PM
To: FarmBillRules
Subject: FW: Attn: Conservation Security Program

Attachments: AFT Comment on CSP Interim Final Rule.doc



AFT Comment on
CSP Interim Fin...

Thanks,

Craig Derickson

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-----Original Message-----

From: rmccracken@FARMLAND.ORG%inter2 [mailto:rmccracken@FARMLAND.ORG]
Sent: Tuesday, October 05, 2004 5:17 PM
To: FarmBillRules; Derickson, Craig
Cc: rgrossi@FARMLAND.ORG%inter2; jdaukas@FARMLAND.ORG%inter2
Subject: Attn: Conservation Security Program

October 5, 2004

Financial Assistance Programs Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, DC 20013-2890

Attached please find American Farmland Trust's comment on the interim final rule for the Conservation Security Program. If you have any problems opening the document, please contact me at the number below. Thank you for your time and consideration.

Sincerely,

Robert McCracken
Federal Policy Specialist
American Farmland Trust
(202) 331-7300 ext 3020

<<AFT Comment on CSP Interim Final Rule.doc>>

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Financial Assistance Programs Division
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Washington, DC 20013-2890

COMMENT ON THE CONSERVATION SECURITY PROGRAM INTERIM FINAL
RULE

Please find below American Farmland Trust's (AFT) comments on the Interim Final Rule for the Conservation Security Program (CSP) published in the Federal Register on June 21, 2004 by the Natural Resources Conservation Service (NRCS).

The NRCS faced a difficult task in getting the CSP up and running during fiscal year 2004. Despite budget constraints and a short timeline, the agency issued a notice and an interim final rule to implement the program in 18 watersheds. While it deserves recognition for all it accomplished, the version of the CSP that the NRCS implemented is far from the program passed by Congress in the 2002 Farm Bill. This is evident by the fact that only 2,188 out of an estimated 27,300 eligible farms and ranches received CSP contracts during the recent sign-up.

The CSP is the nation's first comprehensive stewardship incentive program and we believe it should become a central component of future U.S. farm policy. In order for it to do so, however, the NRCS must implement the program in a manner that is national in scope, financially attractive to producers and predictable. In our comments on the proposed rule, we recommended that the NRCS reject the proposed watershed approach, eliminate the system of enrollment categories and provide the maximum payment levels authorized by the statute. Unfortunately, the agency did not include these fundamental changes in the interim final rule.

AFT once again urges the NRCS to eliminate restrictions that limit CSP enrollment to select watersheds and encourages the agency to utilize an allocation system that ensures that CSP is implemented in all states. AFT also encourages the agency to remove the contract payment limitation from the final rule and provide producers with meaningful program payments. We further urge the NRCS to recognize the diverse nature of agricultural operations by ensuring that a broad array of conservation practices and systems are eligible for CSP payments. We believe that these changes will not only result in a CSP that is available to all farmers and ranchers regardless of size, product, or

geography, but will also recognize farmers and ranchers who protect and improve the environment.

We hope you will consider these thoughts and the detailed recommendations below as you develop the final rule for the CSP.

COMMENTS ON THE INTERIM FINAL RULE

§1469.4 Significant resource concerns

Recommendation: AFT recommends that the NRCS determine any additional resource concerns at the state level. We also recommend that the agency refrain from using its ability to propose additional significant resource concerns to further restrict program eligibility.

Comment: The interim final rule allows the Chief to determine additional nationally significant resource concerns during each sign-up. This proposal adopts a one-size fits all approach to conservation by failing to acknowledge the unique resource concerns facing each state. AFT believes that State Conservationists, with input from State Technical Committees, are better positioned to make informed decisions regarding resource concerns in their states. Allowing each state to determine additional significant resource concerns recognizes the knowledge of local resource issues possessed by NRCS state level staff. Determining resource concerns at the national level may effectively address issues impacting some regions of the country, but it will ultimately limit the environmental benefits the CSP provides.

Advance notice of additional resource concern requirements is critical in light of the agency's estimation that it may take eight years to rotate through all of the nation's watersheds. Last minute notice of additional resource concern requirements may deny some producers the opportunity to enroll in the CSP until the NRCS selects their watershed once again. AFT believes that the agency should not use additional resource concern requirements to determine initial eligibility, but should require producers to achieve them over the life of the contract.

Finally, we believe that the NRCS should not limit significant resource concerns to those listed in the NRCS Field Office Technical Guides. The continued existence of farm and ranch land is a legitimate resource concern in certain areas of the country. AFT supports the addition of farm and ranch land protection to the list of resource concerns from which State Conservationists may choose.

§1469.5(c)(2) Have control of the land for the life of the proposed contract period

Recommendation: AFT commends the NRCS for revising this provision to allow producers to submit letters as proof of control of the land. We also commend the agency for no longer requiring producers to maintain conservation treatments on land that is not

included in their contract. However, the agency should clarify this provision to ensure that producers who are unable to demonstrate control of all the land they work may still enroll the land they do control in Tier II or Tier III contracts.

Comment: The NRCS has decided to eliminate the provision that would have required producers to maintain land not under their control for the life of the contract at the same level as land included in the contract. The agency must now clarify the types of contracts for which these producers are eligible. Producers who meet the tier specific requirements for the land that they have under their control should be eligible for the corresponding tier even if their CSP application does not cover their entire agricultural operation. Allowing producers to enroll in the tier for which they qualify based on the acreage that they control, will maximize the environmental benefits provided by the program.

§1469.5(e)(1) Minimum tier eligibility requirements

Recommendation: AFT opposes the tier eligibility provisions that require producers to address resource concerns to the minimum level of treatment as a condition for enrollment. We encourage the NRCS to revise this provision to better reflect the original language of the statute. The agency should require producers to achieve the minimum level of treatment during the life of their contract rather than as a condition for eligibility.

Comment: The minimum level of treatment requirement further restricts producer eligibility for the CSP and limits the number of environmental and conservation benefits that the program provides. While the statute may provide the Secretary with the ability to establish additional tier requirements, the minimum level of treatment provisions conflict with the intent of Congress to create a conservation program open to all producers.

It is critical that the NRCS not impose minimum level of treatment requirements that prevent deserving producers from enrolling in the program. While AFT agrees that the NRCS should require producers to demonstrate a prior commitment to conservation as a condition of eligibility, we believe that the minimum level of treatment criteria it proposed in the interim final rule are too high. Rather than requiring producers to meet the criteria as a condition for eligibility, the agency should require producers to achieve the minimum level of treatment by the second year of their contract.

§1469.5(e)(2) Minimum level of treatment on cropland

Recommendation: AFT opposes the Tier I and Tier II minimum level of treatment requirements for cropland. However, if the NRCS pursues this approach, we recommend that the agency further clarify the soil quality and water quality criteria. The NRCS should change the minimum level of treatment for soil quality from “positive” to “greater than or equal to zero” and the minimum level of treatment for water quality from meeting or exceeding the “quality criteria” to meeting or exceeding the “quality criteria at the resource management system level.”

§1469.5(e)(3) Minimum level of treatment on pastureland and rangelands

Recommendation: AFT opposes the Tier I and Tier II minimum level of treatment requirement for pastureland. However, if the NRCS pursues this approach, then we concur with the agency's decision to create separate minimum level of treatment requirements for pastureland and rangeland. AFT also concurs with the proposal to tie the minimum level of treatment to a producer's grazing management plan.

§1469.5(e)(4) The minimum level of treatment for Tier III

Recommendation: AFT opposes the Tier III minimum level of treatment requirement. We believe that this provision places an excessive burden on producers and will discourage participation at the Tier III level by those who want to provide significant environmental and conservation benefits. AFT recommends that the NRCS require participants to achieve the minimum level of treatment for all existing resource concerns by the end of their contracts. If the agency pursues the minimum level of treatment approach, then we urge it to require Tier III participants to address soil and water quality concerns prior to enrolling in the program and all other resource concerns by the end of their contract.

§1469.6(a) Selection and Funding of Priority Watersheds

Recommendation: AFT opposes the use of a priority watershed approach and recommends that the NRCS replace it with an allocation system similar to that used for other NRCS conservation programs. Allocating funds to each state NRCS office allows the agency to implement the program on a nationwide scale, while maintaining the agency's ability to expand or ratchet back the program based on funding availability.

Comment: While the NRCS asserts that the priority watershed approach provides the CSP with the best chance for success, AFT believes that the approach will severely dampen producer interest in the program because of its limited availability. Under the current proposal, the NRCS estimates that it will take at least eight years to rotate through the nation's 2,119 watersheds. This will exclude many interested producers during every sign-up by requiring them to wait for their watershed's "turn" and limit the environmental and conservation benefits that their participation in the program could provide. AFT encourages the NRCS to adopt a state allocation system for the CSP that will enable state NRCS offices to implement the program in a manner that addresses local resource concerns.

Under this approach, the NRCS could base state allocations on the same data that it proposes to use for the selection of the priority watersheds. State NRCS offices would work with NRCS Headquarters to identify CSP goals and priorities that address the

state's resource concerns. This approach would increase access to the CSP and generate interest among producers. In addition, it would enable State Conservationists to focus funds in specific areas to address major resource concerns and continue to provide the NRCS with the ability to expand or ratchet back the program based on funding availability.

The NRCS believes that the proposed watershed approach will enable it to evaluate the effectiveness of the CSP by linking conservation practices to actual environmental benefits. The state allocation approach does not eliminate the agency's ability to collect this data. The NRCS could require each state to identify a critical watershed in which to focus a portion of the annual CSP allocation. This would allow the NRCS to collect data, enable states to address issues in critical watersheds, and provide all producers in a state with an opportunity to participate in the CSP.

Finally, in our comment on the proposed rule, AFT proposed the use of a statewide lottery system as an alternative to the priority watershed approach. In the interim final rule, the agency did not provide an adequate explanation as to why this was not a viable option. A lottery based on producer interest would not require the agency to expend valuable technical assistance funds as it asserts. AFT requests that the NRCS further explore the use of a state level lottery to implement the program.

§1469.6(b) Enrollment Categories

Recommendation: AFT urges the NRCS to eliminate the system of enrollment categories from the final rule. The categories unfairly rank producers and create another mechanism for the agency to limit payment rates and participation levels.

Comment: The NRCS proposes to place all applicants in enrollment categories in order to restrict participation in years of capped funding. AFT believes that Congress did not intend for the agency to create a system of enrollment categories to identify and prioritize eligible producers as the NRCS asserts.¹ The agency cites the following text as providing it with the authority:

The Secretary shall establish and, for each of fiscal years 2003 through 2007, carry out a conservation security program to assist producers of agricultural operations in promoting, as is applicable with respect to land to be enrolled in the program, conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and any other conservation purposes, as determined by the Secretary.²

It is clear from the text that the phrase "conservation purpose" on which the agency is justifying the enrollment categories is referring to a natural resource or conservation concern not to a classification system. The intent of this section is to provide the agency

¹ 69 Fed. Reg. 34506 (2004)

² 16 U.S.C. §3838a(a)

with guidelines for providing assistance to producers rather than granting it the authority to focus or limit eligibility.

The NRCS indicates in the interim final rule that it does not have the authority to rank applications based on the number of enhancement activities they contain.³ If this is true, then the agency also does not have the authority to create the proposed system of enrollment categories that place participants in categories based on the number of stewardship practices and activities they currently use as well as on their commitment to implement additional enhancement activities.⁴

§1469.6(c) Sign-up Process

Recommendation: AFT recommends that the NRCS not include additional eligibility criteria or additional significant resource concerns in the sign-up notices. If the NRCS pursues the priority watershed approach, then it is all the more critical that it not add eligibility criteria or significant resource concern requirements that could prevent producers from enrolling in the program.

Comment: Publishing new eligibility requirements in a sign-up notice one or two months prior to the actual sign-up window trivializes the attempts of producers to meet previously established requirements. It is unlikely that the CSP will maintain any level of support among producers if they face continually changing program requirements. The NRCS should create specific procedures for adding eligibility criteria and significant resource concerns in a manner that provides sufficient public notice. By publishing an annual notice at least twelve months in advance, the agency would provide producers with time to meet the new criteria.

§1469.8 Conservation practices and activities

Recommendation: AFT urges the NRCS to make a broad array of structural and land management practices and activities from the NRCS Field Office Technical Guide as well as complex management systems eligible for each CSP payment component. The agency should also provide state NRCS offices with the flexibility to identify practices and activities that address resource concerns specific to each state.

Comment: The NRCS proposes to allow the Chief to determine which structural and land management practices will be allowed for use in the CSP. While AFT believes that considerations such as cost effectiveness, potential for conservation benefits and degree of resource treatment are important, we are concerned that the agency will use the extensive list of considerations to limit the number of eligible practices and activities. It is critical that producers have a broad array of practices and activities found in the Field Office Technical Guide from which to choose. However, we believe that eligible

³ 69 Fed. Reg. 34504 (2004)

⁴ 69 Fed. Reg. 34506 (2004)

practices and activities should provide conservation benefits rather than increases in productivity. Further, practices producers must implement to meet conservation compliance requirements should not be eligible for cost share. Determinations of eligible practices and activities must occur at the state level, not the national level. State Conservationists should identify the practices and activities that are appropriate for their state and that provide real conservation benefits.

§1469.20(a)(2) Application for contracts

Recommendation: AFT recommends that the NRCS no longer require applicants to include a conservation stewardship plan or a benchmark condition inventory with their initial CSP application. This requirement is an unnecessary burden on producers who may not receive funding and requires NRCS to expend large amounts of technical assistance funds.

Comment: AFT urges the NRCS to re-evaluate its current application requirements and to remove the conservation stewardship plan and benchmark condition inventory requirement. The agency could obtain a basic overview of the information contained in the conservation stewardship plan by asking producers to list the conservation practices in use at the time of the application. This will provide the NRCS with valuable information that it can use as it considers applications. Once the agency identifies participants, it can focus technical resources on developing thorough and comprehensive conservation stewardship plans and benchmark condition inventories for the selected applicants. This will reduce overall technical assistance costs, remove the burdensome requirements on applicants and result in the development of viable conservation stewardship plans that provide maximum environmental benefits.

§1469.21(d)(3) Transition to a higher tier

Recommendation: AFT commends the NRCS for reducing the transition period requirement for participants moving to a higher tier. However, we recommend that the NRCS provide the participants with stewardship payments at the higher tier rate during the 12-month transition period.

Comment: AFT supports a conservation program that encourages participants to undertake additional conservation efforts. The NRCS should encourage participants to increase their tier of participation in order to increase the total amount of environmental benefits derived from the CSP. Participants who successfully move to a higher tier by maintaining a higher level of stewardship on their land for 12-months should receive financial compensation for doing so. Providing stewardship payments that compensate participants at the higher tier rate during the transition period recognizes the costs that participants will incur in transitioning to the higher tier. Participants who fail to successfully complete the transition period should reimburse the NRCS the difference in the stewardship payment rate between the two tiers.

§1469.21(g) Contracts expire

Recommendation: AFT recommends that the NRCS allow participants to renew CSP contracts immediately upon their expiration rather than waiting until a subsequent sign-up. In order to maximize the benefits derived from the CSP, the NRCS should strive to maintain the continuous enrollment of producers interested in signing a new CSP contract.

Comment: The NRCS proposes to allow participants with expired contracts to reapply for the CSP during subsequent sign-up periods. It is unclear from the language of the interim final rule whether “subsequent” refers to the next sign-up period or to the next sign-up period for the participant’s watershed. If the latter is the case, then producers wishing to re-enroll in CSP could wait eight years before they have another opportunity to re-enroll. During that time, they may find it financially impractical to implement conservation activities without CSP cost-share payments. This could result in the loss of the environmental improvements achieved while the producer was enrolled in the CSP.

AFT believes that producers should have the opportunity to re-enroll in the CSP immediately upon the expiration of their contract. This process should not occur automatically, but instead serve as an opportunity to evaluate the gains achieved during the life of the contract and to identify new areas of concern. All participants interested in renewing a contract should, with NRCS assistance, complete a new benchmark condition inventory and develop a new conservation stewardship plan that allows for continued performance improvements. This will ensure that the CSP continues to yield maximum environmental benefits by maintaining a continuous presence on the nation’s farm and ranch lands.

§1469.23(a) Stewardship component of CSP payments

Recommendation: AFT opposes the application of a reduction factor to stewardship payments and urges the NRCS to provide the full level of stewardship payments authorized by the statute.

Comment: The NRCS proposes to increase the reduction factor from 0.1 for all tiers to 0.25 for Tier I, 0.50 for Tier II and 0.75 for Tier III. While this proposal represents a significant improvement, it still is at odds with the payment scheme set forth in the statute. AFT urges the NRCS to remove the reduction factor and provide participants with the stewardship payment rate outlined in the statute. The agency notes that it lacks statutory authority to create a specific mechanism for limiting payments and asserts that if it does not limit payment levels, it would need to change the rule each time Congress adjusts CSP funding levels.⁵ This assertion is incorrect. Reducing stewardship payment rates beyond the tier specific percentage required by the statute will result in minimal cost savings. AFT believes that providing adequate stewardship payments is critical to retaining producer support for and interest in the program.

⁵ 69 Fed. Reg. 34503 (2004)

§1469.23(b) Existing practice payment

Recommendation: AFT urges the NRCS to provide existing practice payments at the 75 percent cost-share rate allowed by the statute (90 percent for beginning farmers and ranchers and limited resource producers). AFT recommends that the agency guarantee existing practice cost-share rates to a producer for the duration of their conservation security contract.

Comment: AFT supports an existing practice payment system that provides producers with cost-share rates that recognize their conservation efforts and encourage them to maintain existing conservation practices. The NRCS should strive to provide all producers with a cost-share rate that is 75 percent of the average 2001 county cost of installing or maintaining the practice. AFT also encourages the agency to include a 90 percent cost-share for beginning farmers and ranchers and limited resource producers in the final rule. This will enable these farmers to implement sound conservation practices and systems on their operations.

The interim final rule §1469.23(b)(7) allows the Chief to reduce rates in any given sign-up notice. It is unclear if the reduced rates apply only to new contracts or to existing contracts as well. AFT urges the agency to clarify that these new rates would apply to new contracts only. Producers who sign a conservation security contract should be assured of the same rate for the duration of their contract. AFT opposes any attempts by the agency to alter payment rates during the contract period.

§1469.23(c) New practice payments

Recommendation: AFT encourages the agency to provide new practice payments at a cost-share rate that is 75 percent of the cost of installing and maintaining the practice. AFT also urges the agency to provide a broad array of conservation practices from which producers may choose.

Comment: AFT believes that low cost-share rates will discourage producers from undertaking additional conservation efforts thereby reducing the environmental benefits derived from the program. The best way to encourage producers to implement new conservation practices is to provide reasonable cost-share rates. The statutory cost-share rates of up to 75 percent of the cost of implementing and maintaining a practice will encourage producers to undertake additional conservation activities.

We also believe that it is important to provide producers with a broad array of practices for which they can receive new practice payments. This will provide producers with the flexibility to address resource concerns in the manner best suited to their operation. While we recognize the agency's desire to complement other conservation programs instead of substituting for them, we believe that the NRCS should not preclude the use of a

conservation practice under CSP simply because that practice is an eligible practice under another NRCS program. Producers who meet the requirements to enroll in the CSP and who want to implement a practice that improves environmental quality, should receive cost-share payments to do so even if funding for the practice is available under a different program.

§1469.23(e)(5) Contracts will be limited

Recommendation: AFT opposes the contract payment limitations contained in the interim final rule. The limitations serve to further restrict already low producer payments and discriminate against producers with small acreages or low rental rates. In addition to restricting producer payments, the limitations severely restrict the number of enhancement practices that producers are able to implement, thereby limiting the potential environmental benefits derived from that farm operation.

Comment: The NRCS proposes to limit the total CSP payment producers receive for stewardship, existing and enhancement payments to a percentage of the full stewardship payment rate. The agency justifies the need for the limitation by linking it to producer concerns about the “potential effects of the CSP rental payment levels on the land prices and rental values.”⁶ AFT is skeptical that land prices and rental values will increase as a result of CSP payments and believes that any distortions that may occur will be less than those caused by either the Conservation Reserve Program (CRP) or the commodity programs.

Research has found that payments for some farm bill programs do have an effect on land prices and rental values. CRP payments distort land values by taking marginal land and highly erodible land out of production. This increases soil quality and soil tilth which in turn increase the productivity potential of the land in the short-term. Commodity programs distort land values by attaching the payments to the land. The payments become additional farm income and contribute to higher rental rates and ultimately higher land values.

The CSP differs dramatically from these two programs. Farm and ranch land enrolled in the CSP must comply with the highly erodible land and wetland conservation provisions. As a result of these requirements, CSP participants, unlike CRP participants, are already working highly productive land. Further, the portion of a producer’s CSP payment that is tied to acreage is limited by language contained in the statute.⁷ This means that the effects of acreage based CSP payments are not on par with those associated with the commodity programs. The stark differences between the nature of CSP payments and the payment systems and intent of the CRP and commodity programs make it extremely unlikely that CSP contract payments will have anything more than a minor effect on land values and rental rates.

⁶ 69 Fed. Reg. 34506 (2004)

⁷ 16 U.S.C. 3838c(b)(2)(B) limits the base payment to 25 of the applicable payment limitation for Tier I or 30 percent of the applicable payment limitation for Tier II and Tier III.

The proposed contract payment limitations also contradict the goals and objectives of the CSP as stated by the NRCS in its publications concerning the program. The agency stated in the proposed rule that “the enhancement provisions of the program should be specifically designed to showcase highly effective conservation activities and demonstrate how more intensive management activities can improve resources...”⁸ The interim final rule states that “NRCS will maintain the concept of limiting practice payment options and encourage enhancement activities that provide for additional environmental performance.”⁹ Despite these statements, the NRCS proposed a contract payment limitation that essentially places restrictions on the ability of producers to undertake enhancement activities. The limitations will discourage producers who want to provide additional environmental benefits through the implementation of innovative and sometimes costly enhancement activities.

§1469.23(g) Ability to limit CSP payments

Recommendation: AFT recommends that the NRCS implement an open and equitable program that recognizes the conservation efforts of all eligible producers. We oppose any attempts by the agency to allow the Chief to limit payments to certain activities and benefits.

Comment: The NRCS proposes to allow the Chief to target program payments toward certain activities and conservation benefits. AFT believes that all participants should receive appropriate financial compensation for their conservation efforts. This proposal introduces a procedure that could potentially discriminate against certain types of producers. Congress designed the CSP as a program open to all producers, not just to targeted groups. Participants in all regions of the country should receive payments based on the cost of implementing a conservation practice in their area instead of on the Chief’s discretion. Any attempts to limit CSP payments should go through an additional rulemaking process.

§1469.23(h) Pro-rated Contracts

Recommendation: AFT opposes any attempts by the NRCS to pro-rate contracts and recommends that the NRCS honor all contract commitments at the agreed upon levels.

§1469.31(b) Participants cannot appeal the following decisions

Recommendation: AFT recommends that the NRCS establish a process that will enable participants to appeal payment rates. If the agency intends to retain the ability to pro-rate contracts and to change payment rates, it must provide participants with an opportunity to

⁸ 69 Fed. Reg. 196 (2004)

⁹ 69 Fed. Reg. 34510 (2004)

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contest its decisions. Participants enter into CSP contracts under a certain set of conditions; it is unreasonable to allow the NRCS to change those conditions without providing participants an opportunity to appeal.

Comment: The interim final rule contains provisions that prevent participants from appealing NRCS decisions concerning payment rates. This provision, whether viewed on its own or in conjunction with §1469.23(h), places participants in an unfair position. It provides the NRCS with the ability to make programmatic changes, but it does not provide participants with an opportunity to contest those changes. Participants may agree to implement certain conservation practices while enrolled in the CSP because cost-share rates and other payments make the practices affordable. This provision allows the agency to change the payment rate in the future but does not establish any recourse for participants. AFT believes that participants have a right to contest agency decision regarding payment rates because the decisions significantly impact their ability to implement conservation practices.